

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91590-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
this 9th day of September 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On August 5, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On July 23, 2008, after a review of the material submitted, the Commissioner accepted the request.

The issue in this matter can be resolved by analyzing the Blue Care Network (BCN) Blue Elect Self Referral Option certificate of coverage (the certificate), the contract defining the Petitioner's health coverage. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

II
FACTUAL BACKGROUND

The Petitioner is a member of BCN. Her certificate offers benefits under two tiers. Tier 1 coverage is services performed or coordinated by a primary care physician. Tier 1 offers a higher level of benefits with lower or no copayments or deductible. Tier 2 coverage allows

members to obtain certain services by self-referring and includes services not provided or referred by a primary care physician. Certain services are excluded from coverage under Tier 2.

From July 9 through July 30, 2007, the Petitioner received chiropractic services from Dr. XXXXX at XXXXX. Dr. XXXXX is not part of the BCN provider network. The claims for these services totaled \$948.00.

When the Petitioner sought retro-authorization and coverage for the services, BCN denied the request. The Petitioner appealed BCN's denial and, after exhausting BCN's internal grievance process, received its final adverse determination letter dated July 31, 2008.

III ISSUE

Did BCN properly deny coverage for the Petitioner's chiropractic services from an out-of-network provider?

IV ANALYSIS

Petitioner's Argument

In June 2007 the Petitioner was in a motor vehicle accident. She asked her primary care physician (PCP) for a prescription for chiropractic care. Before having the chiropractic treatment, she says she contacted BCN to determine if she had coverage for chiropractic services and was told there was no coverage.

The Petitioner decided to proceed with treatment anyway because she was in pain and also because she believed the care would be covered by her auto insurance if BCN denied coverage since her problems were related to the motor vehicle accident.¹

Dr. XXXXX diagnosed "acute post traumatic multiple subluxation complexes in the cervico-thoracic and lumbo-sacro spine with Cervicalgia, Cephalgia radiating into the brachial

¹ The Petitioner has automobile insurance coverage from State Farm.

trajectory bilaterally, Thoracic Spinal Radiculitis and Lumbaralgia radiating into the sciatic trajectory bilaterally” and treated the Petitioner from July 9 through July 30, 2007.

Following the treatment, the Petitioner requested coverage from BCN. BCN denied coverage, saying in a determination dated July 2, 2008, following the step one grievance:

Our records confirmed the requested services were provided by an out of network or Tier 2 provider. Under your certificate, chiropractic spinal manipulation is a non-covered service and therefore not payable under your Tier 2 coverage. Therefore, your request for payment must remain denied. The service is available under your Tier 1 benefit, when referred to a contracted provider by your primary care physician.

The Petitioner says BCN initially told her there was no coverage at all for chiropractic care. She says if she had been advised that she needed to obtain the services from a network provider, she would have taken the necessary steps to do so.²

The Petitioner argues that BCN should cover the cost of the treatment provided by Dr. XXXXX because if she had been given correct information regarding her health coverage she could have obtained the services from a network provider.

Respondent's Argument

In its final adverse determination, BCN denied coverage saying, "The Panel maintains the denial because the chiropractic services, as provided, are not covered. Therefore, your request remains denied." BCN bases its position on the certificate (page 26), which states in pertinent part:

PART 2: EXCLUSIONS AND LIMITATIONS

This section lists the exclusions and limitations of your BCN 10 Certificate.

* * *

2.03 NONCOVERED SERVICES

Under this Certificate, the following services are not payable:

- Services that do not meet the terms and guidelines of this Certificate.

2. The Petitioner also says she attempted to get coverage from State Farm but was denied because she did not follow BCN's guidelines.

- Office visits, exams, treatment, tests and reports for any of the following:

* * *

- Chiropractic Spinal Manipulation (Tier 2 coverage only)

BCN denied coverage because there is no Tier 2 coverage for chiropractic services under the certificate.

Commissioner's Review

The Commissioner carefully reviewed the arguments and documents the parties submitted. The issue in this case is whether BCN properly denied coverage for the Petitioner's services from a non-network provider.

The Petitioner says that BCN initially told her that chiropractic care was not a benefit under her certificate and did not explain that it could be covered as a Tier 1 benefit if she received a referral from her PCP and received the services from a network provider. She also acknowledged that she proceeded with the chiropractic treatment after being told it was not covered because she thought it would be covered under her auto insurance since it was related to her auto accident.

It is not possible for the Commissioner to know the substance of the exchange the Petitioner had with BCN when she initially called to inquire about coverage. The Patient's Right to Independent Review Act does not allow the Commissioner to make the kind of fact-finding that would be needed to support or refute the Petitioner's contention that BCN gave her incorrect information. The Commissioner's role in this case is limited to determining if BCN correctly applied the terms and conditions of the certificate. Based on the facts in this case, the Commissioner finds that it did.

The certificate explains that certain services from out-of-network providers are not covered under Tier 2, including chiropractic spinal manipulation. The Petitioner treated with Dr. XXXXX, a non-network provider. Therefore, the Commissioner finds that BCN's final adverse determination is consistent with the terms and conditions of the certificate.

**V
ORDER**

Respondent BCN's July 31, 2008, final adverse determination is upheld. BCN's denial of coverage for chiropractic services from an out-of-network provider as a Tier 2 benefit is in accord with the Petitioner's certificate.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.